

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

REUBEN LEE DURHAM, JR.

PLAINTIFF

v.

Civil No. 06-5152

DEPUTY UNDIANO; NURSE
SUE McDONALD; and
DR. NEIL MULLINS

DEFENDANTS

ORDER

Defendants have filed a motion for summary judgment (Doc. 14). To assist the plaintiff in responding, the undersigned is propounding a questionnaire. For this reason, Reuben Lee Durham, Jr., is hereby directed to complete, sign, and return the attached response to defendants' summary judgment motion on or before **December 28, 2007**. **Plaintiff's failure to respond within the required period of time may subject this matter to dismissal for failure to comply with a court order.**

IT IS SO ORDERED this 29th day of November 2007.

/s/ J. Marschewski

HON. JAMES R. MARSCHEWSKI
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
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Civil No. 06-5152

DEPUTY UNDIANO; NURSE
SUE McDONALD; and
DR. NEIL MULLINS

DEFENDANTS

RESPONSE TO SUMMARY JUDGMENT MOTION

TO: REUBEN LEE DURHAM, JR.

These questions and answers will serve as your response to the motion for summary judgment filed by the defendants. You may use additional sheets of paper in responding to these questions. You must file this response by **December 28, 2007**.

1. You were booked into the Benton County Detention Center (BCDC) on March 27, 2006, after being arrested at the Sebastian County Detention Center on charges of failure to appear.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to the Defendants' Exhibit 1 at page 1.

2. You were given a copy of the BCDC detainee rules.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page

2.

3. On March 27th you submitted a request for medical care. You stated you had been bitten by a spider while in Sebastian County and the wound was healing well but you needed the dressing changed daily until it was truly healed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

1.

4. On March 28, 2006, you submitted a medical request stating you needed amitriptyline and a mental evaluation. You indicated you couldn't sleep since both your Mother and Step-Father had died over the past couple of months. You stated you needed to be housed alone because you were not mentally stable.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

5. On March 30th, the jail nurse responded by asking if you needed a suicide smock. She also stated she would see you for a dressing change. She stated she would look into getting the medication but the doctor would not be back until Monday. She stated she would see if she could get a hold of him. She asked if you had been taking the medication and if so who had prescribed it. She also asked if you had been to the Ozark Guidance Center (OGC). She stated you would have to have your medical records sent.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 2.

6. You were seen by Dr. Mullins on March 28th. He noted you had a recluse spider bite on the back of your neck that needed dressing. You were given a shot of penicillin,

prescribed Keflex, an antibiotic, ordered to have dressing changes daily, and given Hydrocortisone cream for your feet twice a day. You were also given Ibuprofen, twice a day, for seven days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 3.

7(A). Did Dr. Mullins prescribe anything to help you sleep?

Answer: Yes _____ No _____.

Explain your answer.

(B). Did Dr. Mullins discuss your need for a mental evaluation?

Answer: Yes _____ No _____.

Explain your answer.

8. On March 29th Deputy Greg Davis reported that you were being placed on lock down for refusing to put your shirt on when told to and not going to the feeding line as instructed. When your bedding was removed from your cell, your arm band was found. You had removed it by breaking it.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 1.

9. On March 29th, Nurse Byrd treated you for a follow-up on your spider bite. She changed your dressing, cleaned the wound, and applied triple anti-biotic cream.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 56.

10. On March 30th you signed an authorization for the release of your medical records from OGC.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 4.

11. On March 30th you stated you needed to be taking amitriptyline because you were not sleeping. However, you stated you were not suicidal.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 6.

12. Nurse Byrd stated you needed to see Dr. Mullins on Monday or Tuesday about your spider bite and could discuss this matter with him then. However, she said you should request to see him on Monday or Tuesday in case you were not automatically called in. She also changed your dressing.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at pages 6 and 56.

13. On March 31st, Nurse Byrd noted that the spider bite wound was smaller. She changed the dressing.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 56.

14. On April 1st, you submitted a medical request stating that you needed amitriptyline because you could not sleep after the death of your Mother, your divorce, and the death of your Step-Father.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 7.

15(A). You were seen by Dr. Mullins on April 3rd.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 7.

(B). The nurse changed the dressing on your spider bite on April 3rd. She noted no drainage and the bite was dry.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 57.

(C). The nurse removed the dressing on your spider bite on April 4th and noted no

drainage. She determined no bandage was needed. She authorized you to shower everyday for eight days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 57.

16. On April 4th, when Deputy Vanatta was handing out mats and bed rolls he found you had concealed medications, a pencil shank, and an extra bedroll. You were charged with concealing items from staff and storing medication and placed on lock down.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at pages 2-3.

17. You were found guilty of the disciplinary violations. You appealed and the decision was upheld. You were given ten days lock down and loss of privileges.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 4.

18. On June 8, 2006, you were locked down for refusing to obey the order of Deputy Carlton who instructed you to get out of your bunk and come to the day room.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 5.

19. You were charged with a disciplinary violation and found guilty. You appealed and the decision was upheld. You were given ten days lock down and loss of privileges.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 6.

20. At some point between June 8th and July 5th, you were released from the BCDC.
What day were you released from the BCDC?

Answer:

21. You were booked back into the BCDC on July 5, 2006, on a theft of property charge and failure to appear charge.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 1 at page 3.

22. On July 5th, you completed a medical questionnaire and indicated you had burns on your hand and fore-arm and had a bad back and right shoulder. You noted no other health problems.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 9.

23. On July 8th you were sentenced to ten days lock-down for refusing to obey the order of a deputy. Was this related to the incident that occurred on June 8th with Deputy Carlton?

Answer: Yes _____ No _____.

If you answered no, please explain.

24. On July 15th you submitted a medical request asking to see the doctor about a red line starting up your left arm and a red area about the size of a baseball.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 10.

25. In response on July 17th, Nurse McDonald noted that you would be seen by the doctor.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 10.

26. On July 16th at 17:10 or 5:10 p.m. Deputy Undiano was in E-pod handing out whites to inmates in E-103. You were assigned to E-103 to the bottom tier to cell 135 with inmate Michael Ewald. You motioned for Undiano to come to your cell door to talk to you.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7.

27. You told Undiano you wanted a three "x" t-shirt instead of an XL t-shirt.

Undiano ordered you to put on the XL t-shirt. After you were ordered a second time to put the shirt on, you complied.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7 and Defendants' Exhibit 5 at ¶ 5.

28. Undiano believed the shirt fit you and was not too tight. He told you it would be fine until tomorrow. You said it was too short. Undiano turned his back to resume his duties and he heard you kick your cell door.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7 and Defendants' Exhibit 5 at ¶ 6 & ¶ 7.

29. Undiano called for cell 135 to be opened and entered your cell. He ordered you to put your hands on the wall. You did not comply. He repeated his order. You did not comply and said: "Your about to make me pick up another charge. I just lost my Mom and I

don't really give a f—.”

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7 and Defendants' Exhibit 5 at ¶¶ 8-10.

30. Undiano then sprayed you with a one second blast of Oleoresin Capsicum (OC) spray and placed you on the wall and handcuffed you. You were then escorted out of the cell.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7 and Defendants' Exhibit 5 at ¶¶ 11-12.

31. On the way to pod control, you tensed up your arms and tried to pull away from Undiano. You were placed on the E-103 door. Sgt. Wiens responded to the assistance call. You were then placed on the floor by pod control.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 7

and Defendants' Exhibit 5 at ¶ 12.

32. You were ordered to lay completely down and prone out. You did not comply.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 8.

33. Undiano applied a common peronial strike to your knee and you still refused to lay down. To gain control of you, Undiano moved you from the floor to the wall and placed you on your knees.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 5 at ¶ 13.

34. Once you calmed down, Deputies Smith and Baker escorted you to booking for decontamination.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 8.

35. Undiano and Reyes re-entered E-103 and saw Ewald sitting in the day room. Undiano asked Ewald why he was in the day room instead of in the cell and he responded he was waiting for supplies to clean the OC spray off the wall in his cell.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 8.

36. The force applied by Undiano was intended to achieve a legitimate purpose of maintaining order or security within the detention facility.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 5 at ¶ 15.

37(A). Undiano used only the minimal amount of force necessary to regain security and order and to protect his own safety.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 5 at ¶ 3.

(B). Do you contend Undiano used excessive physical force against you?

Answer: Yes _____ No _____.

If you answered yes, please describe in detail: (a) the amount of physical force he used against you; and (b) whether you were resisting or refusing to obey his orders at the time.

Answer: Yes _____ No _____.

Agree_____Disagree_____Without knowledge to agree or disagree_____.

39. As a result on the July 16th incident, you were charged with disciplinary violations of threatening any person, making excessive noise, and refusing to obey.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 11.

40. You were found guilty and given thirty days lock down with loss of privileges. You appealed and the decision was upheld.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 11.

41. On July 17th, you submitted a medical request asking to see the doctor because you believed your right knee might be fractured. You indicated that you had been involved with a confrontation with deputies over a t-shirt. You stated you had been slammed by

Undiano into the pod door and then onto the floor.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 13.

42. You were seen by Dr. Mullins on July 17th. Dr. Mullins noted you believed you had broken your right knee during the fight. Dr. Mullins noted your left eye was black and you had a small abrasion on your right knee. You also had a spider bit on your left arm with cellulitis. He prescribed penicillin, Keflex, and prednisone.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 12.

43. On July 17th you submitted a request to see a dentist for a tooth that had fallen apart. Nurse McDonald responded that you were on antibiotics and pain medication. She noted they were three to four months behind on the dentist.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 14.

44. On July 22nd, you submitted a medical request complaining that your left hand was numb. You stated it had been numb since your last heart attack.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 15.

45. This is the first time you mentioned any problems with your heart. When did you have a heart attack?

Answer:

46. You were seen by Dr. Mullins on July 25th. He examined your spider bite and noted it was healing well. Dr. Mullins noted you had good grip in both your hands and could raise your arms above your head. He noted no motor liability. Dr. Mullins diagnosed questionable numbness in your hands. He kept you on Keflex and Prednisone. He noted you were headed to prison. Dr. Mullins stated that once you got there they could x-ray your neck if you continued to have problems with numbness in your hands.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 16.

47. On July 27th you submitted a grievance about medical attention. You stated you had a misunderstanding with Undiano about a t-shirt and had been maced, handcuffed, slammed into a cell door, and dog piled on by three or four deputies. In response, Captain Petray said the lieutenant had already talked to you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 5.

48. On July 28th you requested access to the law library and were granted access.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 6.

49. On July 29, 2006, you submitted a grievance complaining that your constitutional rights had been violated by an unreasonable search and seizure. Lt. Carter responded that your constitutional rights had not been violated.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 7.

50. On July 30, 2006, you asked for your legal paperwork from your property. You were instructed to ask the pod deputy to assist you when they were not busy.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 8.

51. You were seen by the nurse on August 1st and given Hydrocortisone cream for your feet and Ibuprofen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 63.

52. On August 1st you complained that you were grieving due process of law and the violation of your constitutional rights. In response, you were told the law library is granted to those who do not have legal assistance. You were told you were represented by the public defender's office. You were told to contact them regarding your criminal charges.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page

9.

53. On August 6th you asked to see the nurse regarding your right shoulder pain.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 18.

54. On August 8th you requested Ibuprofen for right shoulder pain and something for your dry feet.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 19.

55. On August 10th you were seen by Nurse McDonald and given Hydrocortisone cream for your feet and requested Ibuprofen, 600 mg., three times a day. Nurse McDonald explained that Ibuprofen could cause liver damage with an overdose.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 63.

56. On August 18th you submitted a medical request stating you needed to see the doctor. You indicated your right shoulder was inflamed in the joint. You stated you needed an anti-inflammatory such as Ibuprofen, 200 mg., three times a day like before.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 20.

57. On August 21st, you submitted a medical request in which you stated you had a tooth that had fallen apart and a tooth with an exposed root. You said the right side of your

jaw was starting to swell.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 21.

58. You said "can drink anything cold." Did you mean you could not drink anything cold?

Answer: Yes _____ No _____.

If you answered no, explain.

59. You were seen by Dr. Mullins on August 23rd. He asked why you needed Ibuprofen and you stated you had fractured your collarbone several years ago. Dr. Mullins noted the collarbone had healed well and you could raise your hands above your head and touch all fingers with your thumb. Dr. Mullins diagnosed you with questionable right shoulder pain. He prescribed Ibuprofen, twice a day for five days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

60. Dr. Mullins also examined your feet. He noted some minor dry skin on your heel but nothing requiring medicine.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 22.

61. Did Dr. Mullins examine your teeth?

Answer: Yes _____ No _____.

If you answered no, please state if you asked him about your teeth or discussed the problems with your teeth with him. If you did not, explain why you did not.

62. On August 29th, you submitted a medical request complaining that your right knee was fractured after the confrontation with Undiano. You indicated you had seen Dr. Mullins who stated the knee was "ok." You stated it was not. You stated you wanted something done.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 23.

63. You were seen by Dr. Mullins on August 30th. He examined both your knees and you had full range of motion. There was no bruising, contusions, or swelling in your knees. He diagnosed you with questionable right knee pain. He prescribed Ibuprofen, 600 mg., twice a day for seven days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 24.

64. On September 3rd, you submitted a medical request because of dry heels.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 25.

65. On September 6th you requested Hydrocortisone cream for dry heels.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 26.

66. You were seen by the nurse on September 5th and given Hydrocortisone cream for six days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 64.

67. On September 7th, you submitted a medical request because you had a headache that would not go away.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 27.

68. Nurse McDonald treated you on September 8th for a migraine headache and gave you Ibuprofen.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 64.

69. On September 10th you submitted a medical request because of a boil on your privates.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 28.

70. Dr. Mullins examined you on September 12th. He noted a small red pimple in your pubic hair line. He prescribed Keflex.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 29.

71. On September 13th you requested anti-fungal cream for a bad case of athlete's foot.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 30.

72. On September 14th you complained the antibiotics were making you sick to your stomach. On September 15th, the antibiotics were discontinued.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 31.

73. On September 15th Nurse McDonald gave you antifungal cream for athlete's foot.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 64.

74. On September 17th you asked for dental care. You said you had an exposed root. You noted you were not asking for pain killers but wanted the teeth fixed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 32.

75(A). You were seen by Dr. Mullins on September 19th. He noted that the left upper part of your molar did have part of the tooth gone. He also noted you were complaining about another tooth in your right lower jaw. Dr. Mullins mentioned that you said you were in no pain and just wanted to be put on the dental list. Dr. Mullins diagnosed chronic dental caries. You were referred to a dentist.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 33.

(B). An appointment was made for you with a dentist that day. The appointment was for October 6th.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 64.

76. On September 20th, you submitted a request for medical attention for a head cold or sinus infection. You asked for a decongestant.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 34.

77. You were seen by Nurse Byrd on September 22nd and given Benadryl for five days.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 60.

78. You requested treatment for dry heels on September 30th.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 35.

79. On September 31st you complained that your tooth had an exposed nerve and you walked around in agony all the time. You asked if something would be done soon.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 36.

80. On October 3rd you submitted a grievance complaining you had water on your knee and that the nurse was refusing to give you anti-inflammatory medication. You stated you had a bad motorcycle accident, broken arms, wrists, and your right knee was blown out. You stated you need anti-inflammatory medication ASAP.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 37.

81. In response, Captain Petray stated he would forward your grievance to medical. He stated the doctor made all medical decisions in the jail.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 37.

82. You were seen by the nurse on October 4th and given Hydrocortisone cream for your heels and placed on the list to see the dentist.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 60.

83. On October 4th you submitted a grievance complaining you were not getting medical attention when you requested it. You stated you had a torn ligament in your elbow. You indicated your tramadol prescription had run out last Thursday and hadn't been refilled although you had been told it would be. You also said it took four days to see the nurse. You stated you were having problems sleeping because of allergies and problems breathing. You stated you had been told you would receive Benadryl but didn't receive it.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 12.

84. In response, Captain Petray said he would forward the grievance to medical. He stated the doctor made all medical decisions in the jail.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 12.

85. You were seen by the dentist on October 5th. You gave a history of having been hospitalized in 2005 for three days for pericarditis and said you had been hospitalized five times in four years. You had tooth #28 extracted.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 38.

86. On October 6th you submitted a grievance stating you had requested a special tray because you had no teeth. You stated you got a return saying you would see the nurse this week and were blown off. You asked what the deal was.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 39.

87. In response, you were told your grievance would be forwarded to medical.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 39.

88. On October 8th you requested medical care about your tooth that had been pulled.

You stated it was still bleeding.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 40.

89. On October 9th you submitted a grievance stating that you needed to go back to the dentist. You indicated that the bleeding had still persisted from where the tooth had been pulled and your gum on one side was swollen. You also indicated there was drainage from the extraction site.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 41.

90. Captain Petray responded that he would forward your request to medical.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 41.

91. Nurse McDonald examined you on October 10th and noted that where the tooth

had been extracted was clean and healing and there was no evidence of bleeding or infection.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 60.

92. On October 13th you submitted a grievance. You stated you asked Nurse Sue for something to help with the pain from the extraction and a salt rinse for the hole in your mouth and she said you were abusing the medical system. You stated she denied you medical attention.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 13.

93. In response, Captain Petray stated he would forward your grievance to medical. He stated the doctor made all medical decisions in the jail.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 4 at page 13.

94. On October 14th during a shakedown of D-pod you were found to be hoarding a section of newspaper under your bunk.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 13.

95. You were given a disciplinary for possession of items not authorized for retention, found guilty, and given ten days lock-down. You appealed and the decision was affirmed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 14.

96. On October 17th you submitted a medical request stating a piece of tooth had been left in your gum after your tooth was pulled. You asked to see the doctor not the nurse.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 42.

97. In response, Nurse McDonald wrote that you would see the doctor on Friday.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 42.

98. Did you see Dr. Mullins?

Answer: Yes _____ No _____.

If you answered yes, please state what treatment you received.

99. On November 2nd you requested medical treatment for a sore throat, runny nose, and coughing.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 43.

100. You were seen by Nurse McDonald on November 3rd and given Hydrocortisone cream for your heels, Benadryl for six nights, and Ibuprofen for six days.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 60.

101. On November 10th you were seen by Nurse McDonald after you complained of chest pain. You had no shortness of breath and were alert. Your pulse was regular and there were no abnormalities or distress. You were put on bed rest for the remainder of the day.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 60.

102. You submitted a medical request on November 11th. You stated you had suffered five heart attacks in the last four to five years. You stated Nurse McDonald said you were having an anxiety attack. You asked to be seen by an outside doctor.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 44.

103. You submitted a grievance on November 11th. You stated you had a heart

condition called pericarditis and that you needed to see a heart specialist and have an ultrasound done. You stated your heart problem had been a two day ordeal. You indicated Nurse Sue always said the same thing every time you see her.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 45.

104. Captain Petray responded that the doctor makes all medical decisions in the jail. He stated he would forward the request to medical.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 45.

105. On November 16th, Nurse McDonald noted that Dr. Huskins saw you in the clinic and did not order any specialist to see you.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 45.

106. On November 15th, Dr. Mullins examined you for left hand numbness and noted no problems.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 60.

107. On November 16th, you submitted a request to Captain Petray asking to see a heart specialist.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 46.

108. Captain Petray responded that he would forward the request to medical. He stated the doctor made all medical decisions at the jail.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 46.

109. You were seen by the doctor on November 17th and given prednisone.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 61.

110. On November 25th you were given a disciplinary by Deputy Bohannon for eating bread off of other inmates' trays.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

15.

111. You were found guilty of the disciplinary violation and given ten days lock-down. You appealed and the decision was affirmed.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

16.

112. On November 27th you were written up by Deputy Lee for kicking something towards your cell door. The item you had kicked was a sandwich. You were locked down for disobeying the order of a deputy.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

17.

113. On December 3rd you submitted a medical request asking to be put back on amitriptyline. You stated you had a problem sleeping since your Mother died in January. You said you didn't like having to take narcotics or sleeping agents of any kind but would if you had to.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 47.

114. On December 4th you were seen by Dr. Huskins for a rash on your feet. You were given a anti-fungus cream. You were also continued on 25 mg. of amitriptyline.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 48.

115. On December 10th you submitted a request asking if the dosage of your amitriptyline could be increased. In response it was increased.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 49.

116. On December 17th you again asked for an increase in the dosage of amitriptyline. In response, you were told that the time you were given the medication could be changed.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 50.

117. On December 17th, you requested anti-fungal cream for your feet and were provided it.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 51.

118. On December 20th you submitted a request to see the doctor regarding your heart problem. You stated you wanted to know why you hadn't been checked out by having an ultrasound. In response, you were told the doctor was aware of your history.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 52.

119. On December 24th you requested a moisturizer. You said your feet were cracking. You indicated it was painful. You also said you could not sleep. In response, you were told it was winter and dry. You were also told being incarcerated was not conducive to sleep.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

53.

120. You were seen by Dr. Huskins on December 27th. He noted you complained of tingling in your hands, trouble sleeping and a pinching sensation in your chest.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

54.

121. Upon examination, Dr. Huskins noted your mucous membranes were clear, your throat was clear, your neck supple, your chest clear, and your heart without murmur. The amitriptyline was discontinued. He prescribed Indomethacin, twice a day, for two weeks.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page

54.

122. On December 29th, Deputy Monroe told you to exit your cell and enter the day room. You did not exit your cell and instead began to brush your teeth. You were charged with a disciplinary violation for refusing to obey the orders of a deputy in a timely manner.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 18.

123. You were given a disciplinary hearing, found guilty, and locked down for ten days. You appealed and the decision was affirmed.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 20.

124. On January 11, 2007, you were treated by the nurse after complaining of chest

pain. You were given nitro.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 59.

125. On January 18th you submitted a medical request asking to see the doctor about your heart condition.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 55.

126. On January 20th you were transported to St. Mary's Hospital at approximately 6:00 a.m. You had been complaining of chest pains. You were taken to the emergency room and then moved to room #303.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page

21.

127. An echocardiogram and an angioplasty was performed and the tests revealed no pericarditis and no blockage of the heart. You were released at 5:42 p.m. and returned to the BCDC.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 3 at page 21.

128. You were seen by the doctor on January 26th and diagnosed with anxiety.

Agree _____ Disagree _____ Without knowledge to agree or disagree _____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 59.

129. On January 29th you were treated for back problems and given Ibuprofen.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to Defendants' Exhibit 2 at page 59.

130. You received all medication prescribed to you by Dr. Mullins, Nurse McDonald, or the other doctors or nurses you saw while incarcerated at the BCDC.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain. In explaining, please refer to the medication logs contained in Defendants' Exhibit 2 at pages 65 to 82.

131. You received all medical care Dr. Mullins believed, in the exercise of his medical judgment, was reasonably necessary.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

132. You received all medical care Nurse McDonald believed, in the exercise of her medical judgment, was reasonably necessary.

Agree_____ Disagree_____ Without knowledge to agree or disagree_____.

If you disagree, explain.

133. Please describe in detail how you believe Dr. Mullins exhibited deliberate indifference to your serious medical needs.

Answer:

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS
TRUE AND CORRECT.

EXECUTED ON THIS _____ DAY OF _____ 2007.

REUBEN LEE DURHAM, JR.